STATE OF CALIFORNIA

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January 13, 1988

Honorable Alan B. Flory
Yolo County Assessor
625 Court Street, Room 104
Woodland, CA 95695

Dear Mr. Flory:

This is in response to your letter to Mr. James J. Delaney in which you request our opinion with respect to the taxability of privately owned student housing built on land leased from the Regents of the University of of California and located on the Davis campus.

According to the lease, the Lessor (The Regents of the University of California) has determined that there is a need for student housing at the Davis campus and has decided to utilize ten acres of unimproved land on the campus for that purpose. In general, the Lessee is to build and operate a 200-unit student family housing apartment complex, storage facility, laundry and day care center for Permitted Tenants (¶ 7.1). Permitted Tenants means a family, at least one member of which is an enrolled full-time student at a degree-granting accredited institution of higher learning, as determined by the U.C. Davis Administration, applying the definition of "full-time" established by the student applicant's institution (¶ 39.9). In the event there are surplus rental units available beyond that requested by Permitted Tenants, the Lessee may rent such units to other than Permitted Tenants only with the permission of the Chancellor of the Davis campus. In deciding whether or not to grant such permission, the Chancellor shall take into consideration university, including university student, faculty and staff, interests, but permission shall not be unreasonably withheld or delayed (¶ 7.3.1). A tenant may sublease to one who is not a student, faculty or staff member of U.C. Davis only after establishing to the satisfaction of the Chancellor of the Davis campus that a reasonable effort was made to first sublet to such a tenant (¶ 7.3.2 ii). One who ceases to be a Permitted Tenant before the expiration of his lease shall be permitted to remain a tenant until the expiration of his or her lease. Such tenant may not sublet the unit except to a Permitted Tenant (¶ 7.3.3).

The term of the lease is 50 years (¶ 2.1) The only monetary consideration to be paid by the Lessee is $50 as it is the Lessor's stated intent that the economic value otherwise attributable to the leased land be passed on to the Permitted Tenants in the form of lowered rents and that this objective be accomplished by the rent setting formula in paragraph 5 (¶ 3.1). Included in the rent setting formula are Lessee's operating expenses which include property taxes all of which are payable by Lessee (¶ 5.1.2, 8.1). Lessee is the owner of the project improvements until expiration or earlier termination of the lease at which time they are to be demolished at Lessee's expense or kept by Lessor as Lessor elects (¶¶ 10.5, 10.6).

Revenue and Taxation Code section 107 defines "possessory interests" to mean (a) the possession of, claim to, or the right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person and (b) taxable improvements on tax-exempt land. See also Property Tax Rule 21(a) and (b).

Under the foregoing definitional provisions, it is clear that the Lessee obtained a taxable possessory interest in the ten acres of land owned by the Lessor at the Davis campus as of the effective date of the lease, November 28, 1984. It is also clear under those provisions that the Lessee's interest in the improvements is a possessory interest either because Lessee's ownership in the improvements terminates at the same time Lessee's leasehold interest in the land terminates or because the improvements constitute taxable improvements on tax-exempt land. Further, when the Lessee subleases individual units in the apartment project to tenants, such tenants will have possessory interests as sublessees of Lessee's possessory interest.

In cases such as this where the land in question is owned by a state university as is the University of California, the applicability of article XIII, section 3, subdivision (d), of the California Constitution is at issue. That provision exempts from property tax ". . . property used exclusively for public schools, community colleges, state colleges, and state universities."

The question, therefore, is whether the possessory interests in land and improvements which were created in this case are property "used exclusively for" the University of California, within the meaning of section 3, subdivision (d).

In a similar case, the Court of Appeal held that the possessory interests of students in family housing owned by the University of California were exempt under section 3, subdivision (d), (Mann v. County of Alameda (1978) 85 Cal.App.3d 505). In reaching its decision, the Court stated its rationale as follows at page 508:

> "In Church Divinity Sch. v. County of Alameda (1957) 152 Cal.App.2d 496, the court set forth a test of 'exclusive use' in the context of an analogous exemption. That case turned on an interpretation of article XIII, section 1a, (footnote omitted) 'the predecessor section to present section 3, subdivision (e)' (footnote omitted). It provided that 'Any educational institution of collegiate grade . . . not conducted for profit, shall hold exempt from taxation its buildings and equipment, its ground . . . used exclusively for the purposes of education.' In Church Divinity School, Alameda County sought to impose a property tax directly on two divinity schools. The property was owned by the schools and consisted of (1) a parking lot set aside for students, faculty and staff in attendance at the school for which a minimal monthly parking fee was charged; (2) faculty housing provided rent free; and (3) married student housing. The court held that property 'used exclusively for educational purposes' includes 'any facilities which are reasonably necessary for the fulfillment of a generally recognized function of a complete modern college.' (152 Cal.App.2d at p. 502.) The court further held then that all the property involved was 'reasonably necessary' for the fulfillment of such a function, and that such property was therefore exempt from a tax levied directly on the college.
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> "It is true that in Church Divinity School the tax was levied directly on the college as the owner of the property, whereas in the case at bench, the tax is levied on the students' possessory interest in the property. Subsequently, it was held, however, in English v. County of Alameda (1977) 70 Cal.App.3d 226 (footnote omitted), 'that the section 3, subdivision (e) exemption applies not only to the reversionary interest that the college has in the property, but also the leasehold interests of the students in the property. Section 3, subdivision (d) employs the phrase 'used exclusively for . . . state universities.' Section 3, subdivision (e) uses the phrase 'used exclusively for educational purposes by a nonprofit institution of higher education.' No reason appears to

> exist why the words 'used exclusively' should be given different meanings in the two subsections; on the contrary, it seems obvious that they should be given the same meaning for they appear in immediate sequence and in the same context, namely, tax exemption. Furthermore, both sections exempt certain property from taxation, not on the basis of its ownership, but on the basis of its use for a public purpose. (Ross v. City of Long Beach (1944) 24 Cal.2d 258 . . . . The public purpose which is the ground of the relevant exemption provided by section 3, subdivision (d) is the same as the public purpose which grounds the section 3, subdivision (e) exemption. Section 3, subdivision (e) exempts certain property used 'for educational purposes'; section 3, subdivision (d)'s exemption of property used for, inter alia, state universities, is grounded on a policy of '[encouraging] the cause of education.' (Ross v. City of Long Beach, supra, at p. 262.) Thus, there can be no basis for finding that a given use of property is within the intended scope of section 3, subdivision (e), but not within the intended scope of section 3, subdivision (d).
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> "In light of the holding in Church Divinity Sch. v. County of Alameda, supra, . . . that married student housing owned by the school was encompassed within the meaning of 'used exclusively for educational purposes' in former section 1a, we conclude, therefore, that married student housing used exclusively for a state university comes within the ambit of section 3, subdivision (d).
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> "Thus, since English, supra, holds that the possessory interest of the student is exempt, . . . it would seem to follow that the students' possessory interest in the case at bench is exempt."

The facts of this case are different from those in Mann in that in this case there is a master tenant, i.e., the Lessee who presumably operates the property for a profit. Because of this profit-making aspect, it could be argued that the land and improvements in question are not "used exclusively for" the University of California within the meaning of section 3, subdivision (d). We have, however, previously concluded to the contrary. See, for example,. LTA No. 80/48 dated March 21, 1980, Question No. 1 wherein we concluded that taxable possessory interests in property used by concessionaires exclusively for providing food service to public schools, etc., are exempt under article XIII section 3(d).

Moreover, the possessory interests of the student tenants in this case are legally indistinguishable from those in the Mann case. Since such tenants are sublessees of the same possessory interest created in Lessee, it would be anomolous to conclude that such possessory interest is not exempt under section 3(d) in light of the Mann case.

Based on the foregoing, we are of the opinion that the possessory interests in question are exempt except to the extent that on any lien date any unit is rented or subleased to persons none of whom is a Permitted Tenant or a faculty or staff member of U.C. Davis.

Very truly yours,

Eric F. Eisenlauer

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cc: Mr. Gordon P. Adelman
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